

1 what Comcast does, correct?

2 A That was one element of the  
3 examination, yes.

4 Q And this morning you testified  
5 that under anti-trust literature they'd have  
6 to lose about 30 percent of their revenue  
7 stream, is that your testimony?

8 A You were mixing apples and  
9 oranges.

10 Q Please tell me what that 30  
11 percent was?

12 A Sure. There's -- let's sort of  
13 parse this. The discussion I had about  
14 survival goes to claims out of complete  
15 foreclosure. That's issue one.

16 Issue two is this raising rivals  
17 cost literature which we talked about at  
18 various points here. And the literature that  
19 I discussed that puts a bright-line test by  
20 practitioners in competition policy between 20  
21 and 40 percent, basically says that an  
22 exclusive arrangement, an arrangement that

1 denies somebody access to say five percent of  
2 the market will not be a harm to competition,  
3 that's a relevant fact to look at and Dr.  
4 Singer and I both consider harm to a  
5 competitor and then a harm to competition.

6 Q So just so we're clear, when  
7 you're talking about those kinds of ratios,  
8 you're talking about harm to competition,  
9 correct?

10 A That is correct.

11 Q You're not talking about harm to a  
12 competitor?

13 A I didn't say that, yes. May I --  
14 it's a harm to competition. That's why I'm  
15 using the 20 to 40 percent.

16 Q Correct, and that is not an  
17 appropriate benchmark for determining harm to  
18 a competitor, correct?

19 A A harm to a competitor would be a  
20 different analysis.

21 Q Isn't it true that you think there  
22 may be no harm, even if Comcast forced MASN to

1 shut down?

2 A To competition, that is possible,  
3 yes.

4 Q You said you're not sure that that  
5 would actually amount to a harm?

6 A It depends on what happens in the  
7 marketplace, yes.

8 Q But you would agree with me, that  
9 under those circumstances MASN, as a  
10 competitor, would be harmed?

11 A Right, but it's not clear that  
12 Comcast unreasonably restrained their ability  
13 to compete fairly.

14 Q And so you're not even sure that  
15 that would do it, correct?

16 A Right, because of the word  
17 unreasonable.

18 Q Isn't it true you also didn't even  
19 consider whether MASN would be harmed  
20 unfairly?

21 A Well, as we talked about for a  
22 long time at my deposition, the words "compete

1 fairly" are not words in the economics  
2 literature with regard to industrial  
3 organization, economics, or anti-trust  
4 economics. So I have no ability as an  
5 economist to analyze the words "compete fairly  
6 or unfairly." I can just look at the  
7 unreasonably restraining the ability to  
8 compete and so that's what I examine as an  
9 economist.

10 Q I asked a much simpler question.  
11 Mr. Orszag, isn't it true that you did not  
12 even consider the issue of whether MASN was  
13 harmed unfairly?

14 A That's not the standard that I  
15 applied. The standard I applied was the  
16 standard written in my report, my testimony.  
17 I'm sorry.

18 Q Mr. Orszag, isn't it true that you  
19 did not even consider whether MASN was harmed  
20 unfairly?

21 A I didn't because you're forgetting  
22 the word "unreasonable." Unreasonably

1     restraining the ability to compete fairly.

2     That's what I examined.

3           Q       Mr. Orszag, isn't it true that you  
4     did not examine whether MASN's ability to  
5     compete was unfair?

6           A       I did not because that's not the  
7     standard that I read as an economist.

8           Q       In fact, you said that you didn't  
9     know what competing unfairly meant, correct?

10          A       It's not something in the  
11     economics literature. Those are legal terms.

12          Q       You didn't because you said you  
13     didn't even know what competing unfairly  
14     meant, correct?

15          A       Right.

16          Q       As a human being, Mr. Orszag, do  
17     you know what it means, to compete unfairly?

18          A       Not really. It's not an economics  
19     term.

20          Q       Do you believe you compete fairly  
21     with me if you get to run a race, but take off  
22     two minutes before I do?

1 JUDGE SIPPEL: It depends on how  
2 fast you are.

3 THE WITNESS: Right, it depends on  
4 why is that the case. I don't -- when I was  
5 in high school and played football, they used  
6 to let the lineman run first because they were  
7 slower.

8 BY MR. KIM:

9 Q So as far as you're concerned,  
10 there's no unfair harm to me as long as I get  
11 to the starting line at some point, correct?

12 A I don't know what the words  
13 compete fairly -- I'm thinking about it from  
14 a competition perspective, not a running race  
15 perspective.

16 Q Now it's true, is it not that you  
17 personally studied Comcast market foreclosure  
18 in the past?

19 A That is true.

20 Q You believe that Comcast sports in  
21 Philadelphia is essential programming in  
22 Philadelphia, true?

1           A       I usually use the words quotes  
2 around essential, but the answer is yes. I  
3 mean in the way that it's used in the  
4 telecommunications world, as must-have, I put  
5 quotes around it and use it, yes.

6           Q       Those are your words, aren't they,  
7 sir?

8           A       I don't remember -- I may have in  
9 2001 used the words without quotes and if I  
10 did, it's something I've been very careful at  
11 since then, but I'm not going to disagree that  
12 I may have used it without quotes at some  
13 point in my life.

14          Q       Isn't it true that the satellite  
15 guys wanted to buy CSN Philadelphia in its  
16 Philadelphia market?

17          A       Absolutely.

18          Q       And did you hear Mr. Bond testify  
19 on Thursday?

20          A       Some of his testimony, not all of  
21 it.

22          Q       Did you hear him testify that they

1 might take it, the satellite guys, they might  
2 take it?

3 A I think I did, yes.

4 Q You know the answer there, don't  
5 you?

6 A Of course, but it depends on the  
7 price, but they would take it at a certain  
8 price, of course.

9 Q In fact, they've been dying to  
10 take it. They've been filing things with the  
11 FCC to try to get it, true?

12 A Yes, but if Comcast was offering a  
13 price of I don't know, \$20, they probably  
14 would say no. At some price, they would  
15 absolutely want it.

16 Q But Comcast denied the satellite  
17 guys the right to get CSN Philly in  
18 Philadelphia, correct?

19 A That is true. They used the  
20 terrestrial exemption that I talked about or  
21 loophole previously.

22 Q And you personally decried that



1     loophole, correct?

2           A       I do not believe that a sound  
3     regulatory policy.

4           Q       Comcast took advantage of that  
5     loophole, true?

6           A       Comcast uses, take advantage of,  
7     they use the exemption, yes.

8           Q       And they did that because that  
9     hurt their competitors, correct?

10          A       Well, I don't know the full  
11     reasoning behind why they've done it. They  
12     certainly, it has had the effect of reducing  
13     the competitive appeal of DIRECTV and Dish,  
14     but I do not know all of their business  
15     rationales for doing it and so I can't sort of  
16     reach a conclusion one way or the other on  
17     that.

18          Q       Isn't it true that Comcast's  
19     decision to deny this programming, this  
20     essential programming to its competitors has  
21     prevented them from competing vigorously in  
22     that market?

1           A       It has reduced their competitive  
2 appeal. They have lower subscribership in  
3 their market, absolutely.

4           Q       Has it prevented them from  
5 competing vigorously in that market?

6           A       You could say that they have had a  
7 reduced ability to compete vigorously because  
8 they don't have key programming, yes.

9           Q       Do those words sound familiar, Mr.  
10 Orszag?

11          A       Yes.

12          Q       Competing vigorously in that  
13 market?

14          A       I probably used them because it's  
15 something --

16          Q       Aren't they your words?

17          A       Perhaps.

18          Q       You're not sure?

19          A       Well, I would say that they reduce  
20 competitive appeal. I think I'm saying all  
21 the same things.

22          Q       That helps Comcast promote it's

1 competitive position at market, true?

2 A Yes, why else would they have done  
3 it?

4 Q And to this very day they deny  
5 Comcast sports in Philadelphia to their  
6 biggest competitors in Philadelphia, correct?

7 A That is correct.

8 Q In fact, you wrote in your report  
9 and quoted someone specifically, correct?

10 A There was a footnote on which --  
11 I'll let you ask the question. I definitely  
12 have quoted people in that context, yes.

13 Q And you wrote a report on behalf  
14 of EchoStar in that proceeding, correct?

15 A I believe it was EchoStar and  
16 DIRECTV.

17 Q And you dropped a footnote to  
18 amplify something in your report, true?

19 A That is true.

20 Q And your footnote read "Comcast  
21 used its local sports programming to hamper  
22 competition by refusing to make SportsNet

1 available to satellite TV providers.  
2 SportsNet is a key part of their strategy to  
3 monopolize this market said Dave Davis, WPVI  
4 President and General Manager." Did I read  
5 that correctly?

6 A Yes. Well, I don't have it in  
7 front of me, but it sounds about right.

8 Q And that's a quote you chose to  
9 insert in your report, correct?

10 A And as we talked about, I wasn't  
11 sure if I chose to include it or one of my co-  
12 authors chose to include it, but I did not  
13 take it out, I did not disagree with it.

14 Q You actually signed your report?

15 A Yes, I did.

16 Q Under penalty of perjury?

17 A Yes.

18 Q With that quote inside of it?

19 A Yes.

20 Q And you put that quote in there --

21 A You said I put it in, but I signed  
22 it. I didn't disagree with it. Absolutely.

1 It's a statement of fact from somebody from  
2 WPVI or -- I forget the acronym.

3 Q And when you signed the report,  
4 you believed the report was true, correct?

5 A Absolutely.

6 Q And you didn't put things in the  
7 report randomly, right?

8 A No, not at all.

9 Q You selected things that supported  
10 the point you were trying to make, correct?

11 A Right. I actually think we had a  
12 quote later on in that paragraph talking about  
13 why Comcast has decided to carry the program  
14 the way they did.

15 JUDGE SIPPEL: Is that in his  
16 testimony or is this in the report?

17 MR. KIM: This is a report that he  
18 authored earlier, Your Honor.

19 JUDGE SIPPEL: So it's not in the  
20 testimony?

21 MR. KIM: It's not in his  
22 testimony.

1 JUDGE SIPPEL: The report is in  
2 the record?

3 MR. KIM: It's not, Your Honor.  
4 I'd be happy to put it in, if you'd like it.

5 JUDGE SIPPEL: Well, I'm not going  
6 to push you on it, but if it's not in the  
7 record and it's not in his testimony, I mean  
8 why are we talking that much about it?

9 MR. KIM: Your Honor, there was  
10 some testimony on direct about this witness  
11 and Comcast Sports in Philadelphia.

12 JUDGE SIPPEL: All right.

13 BY MR. KIM:

14 Q Isn't it true that Comcast  
15 foreclosure in the Philadelphia market could  
16 lead to irreparable harm to Dish and DIRECTV?

17 A The word could, yes.

18 Q And that's because of switching  
19 costs, correct?

20 A In part, because of switching  
21 costs. Inertia. Various other factors, yes.

22 Q Isn't it true that CSN

1 Philadelphia makes money from license fees?

2 A Yes.

3 Q It is unambiguously better off,  
4 CSN Philadelphia is by selling its product to  
5 Dish, correct?

6 A Within the four corners of  
7 Philadelphia, they would -- Comcast SportsNet  
8 Philadelphia, they would make more money if  
9 they sold it to Dish.

10 Q But Comcast corporate won't let  
11 it, correct?

12 A I don't know if it's who at  
13 Comcast corporate or where it comes from, but  
14 Comcast as a company does not distribute the  
15 programming to Dish.

16 Q That's an example of Comcast  
17 SportsNet Philadelphia not doing what's in the  
18 best interest of Comcast SportsNet  
19 Philadelphia, correct?

20 A Within the four corners of Comcast  
21 SportsNet Philadelphia, you are correct.

22 Q And that's because they are losing

1 a lot of revenue that Dish and DIRECTV would  
2 be happy to pay for, correct?

3 A To that division, yes.

4 Q And they're willing to lose that  
5 revenue for Comcast SportsNet Philly because  
6 Comcast Cable benefits, correct?

7 A Precisely.

8 Q In fact, that strategy worked out  
9 for Comcast, true?

10 JUDGE SIPPEL: Which Comcast are  
11 you talking about, Comcast Corp?

12 MR. KIM: Comcast Corp.

13 THE WITNESS: Assuming that they  
14 haven't changed their behavior, I assume that  
15 to be true, yes.

16 BY MR. KIM:

17 Q In fact, the satellite guys'  
18 market share got hammered, right?

19 A Well, I don't think -- hammered,  
20 got hammered isn't the right way to describe  
21 it. It didn't grow as rapidly as it did in  
22 other markets.



1           Q       There is a much smaller market  
2   share in the Philadelphia market of the  
3   satellite guys than there is across the  
4   country, correct?

5                   JUDGE SIPPEL:   Say that again?

6                   BY MR. KIM:

7           Q       There is a much smaller market  
8   share of the satellite guys in Philadelphia  
9   than there is in other parts of the country,  
10  correct?

11          A       Controlling for the factors  
12  available to an econometrician, they have --  
13  the DBS providers have a lower market share in  
14  Philadelphia.

15          Q       And that's just Comcast doing  
16  what's best for Comcast, right?

17          A       I assume that Comcast is being  
18  rational, yes.

19          Q       Because you're assuming that  
20  they're economically profit massagers?

21          A       Absolutely.

22          Q       And whatever it owns, its

1 programming arm or distribution arm is a tool  
2 toward that end, correct?

3 A Within the context of the rules  
4 that govern its ability to do various actions  
5 like in this case they are allowed to have an  
6 exclusive relationship between its programming  
7 and its distribution arm. In other cases,  
8 they can't.

9 Q And all of that foreclosure to the  
10 satellite guys, resulted in higher prices for  
11 Comcast in Philadelphia, correct?

12 A I did not reach that conclusion,  
13 no.

14 JUDGE SIPPEL: Why, you didn't  
15 make that analysis or --

16 THE WITNESS: I did to the  
17 analysis. We couldn't take the next step to  
18 say it was a result of. We found that there  
19 were higher prices in Philadelphia.

20 JUDGE SIPPEL: Yes.

21 THE WITNESS: We were only  
22 controlling for two variables. One was the

1 number of channels offered by Comcast in  
2 Philadelphia and the number of premium  
3 channels. If, for example, Comcast offered  
4 more VOD or more HD channels in Philadelphia,  
5 prices could be higher as a result of that  
6 higher quality that we could not include in  
7 our regression.

8 JUDGE SIPPEL: Oh.

9 THE WITNESS: And so I couldn't  
10 rule out that it was due to the lack of the  
11 programming, but I couldn't go the next step  
12 of reaching that conclusion.

13 MR. KIM: May I approach the  
14 witness?

15 JUDGE SIPPEL: Please.

16 THE WITNESS: Actually, if we  
17 could take a break, I'd appreciate that.

18 JUDGE SIPPEL: Sure. Let's try  
19 and get back close to ten minutes. Because  
20 then you're going to finish up and then we can  
21 go and get something to eat.

22 THE WITNESS: Thank you.

1 (Off the record.)

2 JUDGE SIPPEL: Please be seated.

3 Okay, we're all set to go. On the record.

4 MR. KIM: May I approach the  
5 witness, Your Honor?

6 JUDGE SIPPEL: Please.

7 BY MR. KIM:

8 Q Mr. Orszag, I'm showing you what's  
9 been marked as MASN Exhibit 135 which is  
10 already in evidence, Your Honor.

11 JUDGE SIPPEL: Thank you.

12 BY MR. KIM:

13 Q Do you recognize that document,  
14 sir?

15 A I have seen this document, yes.

16 Q I ask you to go to page 68 of that  
17 document. And I don't you want to confuse,  
18 there are two sets of numbers below. One are  
19 page numbers and the other are Bates numbers.  
20 I'm looking at 68 on the page numbers.

21 A I think I'm there. CSN Philly  
22 Model Cable Exclusive Pro Model?

1 Q Yes, sir.

2 A I see that.

3 Q Under the box that reads "pros" do  
4 you see what the second bullet point reads?

5 A Yes, I do.

6 Q [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]?

10 A You read that correctly.

11 Q And then under "cons", does the  
12 first bullet point read, [REDACTED]

13 [REDACTED]

14 A You read that correctly.

15 Q And then under the next bullet  
16 point does it read [REDACTED]

17 Did I read that correctly?

18 A Yes, you did.

19 Q [REDACTED]?

20 A That is correct.

21 Q As an economist, do you know what  
22 OCF stands for?

1           A       I believe it's operating cash  
2 flow.

3           Q       And do you know what MM stands  
4 for?

5           A       Million.

6           Q       [REDACTED]  
7 [REDACTED]  
8 [REDACTED]?

9           A       According to this, yes. That's  
10 not  
11 -- I haven't sort of peeled back the onion to  
12 see if they have done this all correctly,  
13 etcetera.

14          Q       But the pros are that satellite  
15 penetration is much lower in Philadelphia than  
16 it is elsewhere, correct?

17          A       That is a pro that's listed here,  
18 yes.

19          Q       Do you think that DIRECTV and Dish  
20 were unfairly harmed in their ability to  
21 compete against Comcast in Philadelphia?

22          A       Not an analysis that I've

1 conducted to determine whether they were  
2 unreasonably -- I'm sorry, were unfairly  
3 harmed.

4 JUDGE SIPPEL: You were having  
5 difficulty with the word "unfairly" before.

6 THE WITNESS: Precisely.

7 JUDGE SIPPEL: So were you able to  
8 -- is that why you were having -- well, did  
9 you reach any conclusions as to unfairly with  
10 respect to the --

11 THE WITNESS: -- fairly or  
12 unfairly, they have lower market penetration  
13 as a statement of fact in these areas and so  
14 their competitive appeal in these areas is  
15 lower than it would be if they had access to  
16 this programming.

17 JUDGE SIPPEL: Had access to which  
18 programming?

19 THE WITNESS: Comcast SportsNet  
20 Philadelphia, I'm sorry.

21 JUDGE SIPPEL: Okay, access to  
22 Comcast Philly?

1 THE WITNESS: Yes.

2 JUDGE SIPPEL: It would be better  
3 or it could be better?

4 THE WITNESS: They would have a  
5 higher market share, that is DIRECTV and  
6 EchoStar would have a higher market share.

7 JUDGE SIPPEL: Thank you.

8 THE WITNESS: In Philadelphia if  
9 it had access to the Comcast SportsNet  
10 Philadelphia programming.

11 JUDGE SIPPEL: Thank you.

12 BY MR. KIM:

13 Q Mr. Orszag, is it true that across  
14 MASN's geographic footprint every Comcast  
15 subscriber who receives MASN also receives a  
16 Comcast SportsNet product?

17 A Subject to the four areas that we  
18 talked about earlier in your cross  
19 examination, every other system within the  
20 MASN footprint receives one or the other of  
21 Comcast SportsNet Mid-Atlantic or Comcast  
22 SportsNet Philadelphia.



1           Q       The four areas are acquired across  
2 the board, correct?

3           A       Yes, it is, but it still could be  
4 within the MASN footprint.

5           Q       My question is a little bit  
6 different. Isn't it true that across MASN's  
7 footprint every Comcast subscriber who  
8 receives MASN also receives a Comcast  
9 SportsNet product?

10          A       I believe that to be the case,  
11 according to the document I attached to my  
12 expert report.

13          Q       In your opinion, is that a  
14 coincidence?

15          A       I can conduct the economic  
16 analysis. Coincidence isn't necessarily  
17 something that I consider.

18          Q       Is it true that a vertically-  
19 integrated MVPD like Comcast may have an  
20 economic incentive to discriminate against  
21 certain programmers?

22          A       With the word you have, "may"